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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,000	04/19/2004	Christopher V. Brock	27635-2	3485

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EXAMINER

CLEMENT, MICHELLE RENEE

ART UNIT PAPER NUMBER

3641

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/827,000	BROCK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michelle (Shelley) Clement	3641	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,9 and 14-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 9 is/are allowed.
- 6) ☒ Claim(s) 14-15, 17, 19-29 is/are rejected.
- 7) ☐ Claim(s) 16 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 3/17/06 have been fully considered but they are not persuasive. In response to applicant's contention that the "indentations, depressions or scoring" or Gibson et al do not constitute slits because the coloring agent would pour out, it is noted that neither applicant's claims nor specification require the slits to cut completely through the nose cap material in order to constitute "slits" as claimed, the indentations, depressions, or scoring of Gibson et al., whether a cut entirely from an outer surface of the nose material to an inner surface of the nose material or a cut partially through the material constitutes a slit since applicant has not given the definition of "slit" any other than that which it would normally have. Furthermore, Gibson et al. discloses the coloring agent may be a powder in which case the powder would not escape from the chamber whether the cut went entirely from the outer surface to the inner surface. In response to applicant's contention that Gibson et al. does not show a limiting column it is noted that the edge (51) is a limiting column for the frangible disk. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a fluid payload *only* in the body portion and an empty nose cap) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to applicant's contention that the particular material would not be obvious to one of ordinary skill in the art it is noted that claim 19 states that the fluid has a density of "about 2", neither the claims nor the specification state any units. The specification merely states that this is a

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preferred density for a desired result. Less lethal projectiles that spin and are filled with fluids are well known, it has been found to be within the general skill of a worker in the art to select a known material (i.e. glycerin or Vaseline®, which are well known for use in projectiles of this type) on the basis of its suitability for the intended use as a matter of obvious design choice. See *In re Leshin*, 125 USPQ 416. In regards to the materials for the frangible disk, Gibson et al. discloses the claimed invention, and polymer coated cardboard is a well known material. It would have been obvious to one having ordinary skill in the art of less lethal projectiles at the time the invention was made to choose the specific material for the frangible disk, since it has been held to be within the general skill of a worker in the art to select a known material (i.e. polymer coated cardboard) on the basis of its suitability for the intended use as a matter of obvious design choice. See *In re Leshin*, 125 USPQ 416.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 14-15, 17, 22-25 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Gibson et al. (US Patent # 6,615,739). Gibson et al. discloses a less lethal projectile comprising a body having a concentric cavity, a nose cap attached to the body, the nose cap having a plurality of scores/slits therein which will open upon impact allowing a fluid to escape. The projectile comprising a frangible disk to seal fluid in a cavity in the body, the nose cap made

of plastic. The nose cap has a rounded front surface. The fluid comprising a marking dye. The projectile comprising a limiting column contained in the body and a second limiting column contained in the cap. The frangible disk is tightly held between a shoulder in the body and a shoulder in the cap. The disk has a cylindrical projection which projects into the fluid. The nose cap smaller in diameter than the body (in as much as applicant's nose cap is smaller).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. as applied to claims 1 and 14 above. Gibson et al. discloses the claimed projectile except the specific fluid material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a fluid having a density of "about 2" or a mixture comprising glycerine and a heavy inorganic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. See ¶ 5 above. Gibson et al. discloses the claimed projectile except the specific materials for the frangible disk. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a disk of polymer coated cardboard, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Allowable Subject Matter***

7. Claims 1 and 9 are allowed.
8. Claims 16 and 18 are objected to as being dependent upon a rejected base claim, but would possibly be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MICHELLE CLEMENT  
PRIMARY EXAMINER